

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Ross Thomas Kaufman, et al. Art Unit 1773
Serial No. 10/805,008
Filed March 19, 2004
Confirmation No. 7789
For BIODEGRADABLE ALIPHATIC-AROMATIC COPOLYESTER FILMS

October 30, 2006

TO THE COMMISSIONER FOR PATENTS,

SIR:

LETTER TO PATENT AND TRADEMARK OFFICE

In response to the Notice of Allowance dated August 11, 2006, in the above-referenced patent application, applicants respectfully request reconsideration of the patent term adjustment determination. Pursuant to 37 CFR §1.705(b) and/or (d), applicants submit the following statement of facts in support of this request for reconsideration.

The application was filed on March 19, 2004. The Office issued a first action (Restriction Requirement) on March 23, 2006, which is three hundred eight (308) days more than fourteen (14) months after filing the application. Accordingly, there was three hundred eight (308) days of examination delay on the part of the Office.

Applicants responded to this action on April 19, 2006, which is within three months of the mailing of the first action. A supplemental response to the restriction requirement was filed on April 20, 2006, which is one (1) day after the initial response was filed. A supplemental Information Disclosure Statement was filed on May 1, 2006. According to the Patent Application Information Retrieval (PAIR) database there was applicant delay of twelve (12) days, stretching from the day after the initial response to the first action was filed (i.e., April 19, 2006) to the day the supplemental Information Disclosure Statement was filed (i.e., May

1, 2006).

It appears the Office is considering the supplemental information disclosure statement to be a supplemental reply to the March 23, 2006 Office action. As established in 37 C.F.R. §1.704(c)(8), submission of a supplemental reply after a reply has been filed is a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. However, applicants respectfully submit that the supplemental information disclosure statement is not a supplemental reply, as mentioned in 37 C.F.R. §1.704(c)(8).

Initially, applicants note that the supplemental Information Disclosure Statement at issue was not submitted for purposes of supplementing an Office action response. Rather, this supplemental Information Disclosure Statement was submitted merely to report references of which applicants had become aware, in compliance with applicants duty of disclosure under 37 C.F.R. 1.97 and 1.98. It is thus respectfully submitted that applicants should not be penalized by losing patent term, simply because applicants were attempting to comply with the duty of disclosure under 37 C.F.R. 1.97 and 1.98.¹

Rather, as noted above, the actual supplemental response to the restriction requirement was filed on April 20, 2006, which is one (1) day after the initial response was filed. Thus, pursuant to 37 C.F.R. 1.704(c)(8), there is only applicant delay of one (1) day.²

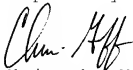
Based on the above recited facts, the delay on the part of the Office was three hundred eight (308) days. The delay on the part of Applicants was one (1) day. The result is a patent term adjustment of three hundred seven (307) days.

¹ Furthermore, applicants note that the supplemental Information Disclosure Statement was filed on May 1, 2006, which is within three months of the mailing date of the March 23, 2006 Office action and therefore does not constitute applicant delay. See 37 C.F.R. §1.704(b).

² 37 C.F.R. §1.708(c)(8) states that submission of a supplemental reply after a reply has been filed shall reduce the period of adjustment "by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was

The Commissioner is hereby authorized to charge any fees which may be required to Deposit Account No. 19-1345. However, in view of the fact that the Office made a mistake in calculating the correct patent term adjustment, applicants respectfully request that the fee in connection with this request be waived.

Respectfully submitted,



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